

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 AMBER AHYAWNA SMITH,
5 Plaintiff,

6 v.

7 CITY AND COUNTY OF SAN
8 FRANCISCO, et al.,
9 Defendants.

Case No. 17-cv-04224-CW

ORDER OF DISMISSAL

(Dkt. Nos. 30, 33, 36)

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11 Individual Defendants Sheriff Vicki Hennessy, Deputy M.
12 Folger, Deputy B. Goodman, Sr., Deputy Lewis, and Lt. Haskell
13 have filed a motion to dismiss or, in the alternative, to compel
14 the deposition of Plaintiff Amber Ahyawna Smith and extend the
15 deadlines for fact discovery and for the filing of a dispositive
16 motion. Plaintiff has not opposed the motion or complied with
17 this Court's discovery and case management orders. For the
18 following reasons, the Court grants Defendants' motion and
19 dismisses this case with prejudice for failure to prosecute.

20 BACKGROUND

21 Plaintiff filed this pro se civil rights action under
22 42 U.S.C. § 1983 against the City and County of San Francisco,
23 the City and County of San Francisco Sheriff's Department, and
24 the Individual Defendants. The Court ordered issuance of summons
25 and Deputy United States Marshals served Defendants. The parties
26 appeared for an initial case management conference on November 7,
27 2017, and the Court set a case management schedule, including a
28 deadline of March 2, 2018 for the completion of fact discovery.

On March 16, 2018, the Court granted Defendants' motion to compel, stayed consideration of Defendants' motion to dismiss and ordered Plaintiff to comply with her discovery obligations no later than April 2, 2018. The Court ordered Plaintiff to file a joint status report or separate declaration regarding her compliance with the Court's order no later than April 3, 2018. The Court warned Plaintiff that if she did not comply fully with the Court's order, her case would be dismissed with prejudice for failure to prosecute.

19	LEGAL STANDARD
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The Court may order sanctions if a party fails, after being served with proper notice, to appear for her deposition. Fed. R. Civ. P. 37(d)(1)(A)(i). Sanctions may include any further just orders, including dismissal of the action in whole or in part. Fed. R. Civ. P. 37(b)(2)(A), (d)(3). This Court applies five factors in considering whether dismissal is appropriate as a sanction: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public

1 policy favoring disposition of cases on their merits; and (5) the
2 availability of less drastic sanctions. Wanderer v. Johnston,
3 910 F.2d 652, 956 (9th Cir. 1990) (quoting Malone v. United
4 States Postal Service, 833 F.2d 128, 130 (9th Cir. 1987)).

5 In order to warrant imposition of terminating sanctions, the
6 Court must find that the failure to comply was "due to
7 willfulness, bad faith, or fault of the party." Wyle v. R.J.
8 Reynolds Indus., 709 F.2d 585, 589 (9th Cir. 1983). A finding of
9 "'disobedient conduct not shown to be outside the control of the
10 litigant'" meets this standard. Henry v. Gill Indus., Inc.,
11 983 F.2d 943, 948 (9th Cir. 1993) (quoting Fjelstad v. American
12 Honda Motor Co., Inc., 762 F.2d 1334, 1341 (9th Cir. 1985)).

13 DISCUSSION

14 Plaintiff has not opposed Defendants' motion to dismiss and
15 did not file a status report or declaration in compliance with
16 this Court's March 16, 2018 order. Mail sent to Plaintiff's
17 address of record has not been returned to the Court as
18 undeliverable, so there is no reason to believe she did not
19 receive the order. On April 3, 2018, Defendants filed a
20 declaration that Plaintiff has not contacted Defendants to comply
21 with the Court's order, and that the last communication
22 Defendants had with Plaintiff was at the November 7, 2017 initial
23 case management conference. The deadline for the close of fact
24 discovery has passed and Plaintiff has not participated in
25 discovery or appeared for her deposition. It appears that she
26 has abandoned this litigation willfully.

27 The interest in expeditious resolution of this litigation,
28 the Court's need to manage its dockets, and the risk of prejudice

1 to Defendants all weigh in favor of granting the motion to
2 dismiss. With regard to the public policy favoring disposition
3 of cases on their merits and the availability of less drastic
4 sanctions, the Court extended the fact discovery cut-off and
5 issued the prior order in an attempt to give Plaintiff an
6 additional opportunity to comply with her obligations and make a
7 disposition on the merits possible. The Court also explicitly
8 informed Plaintiff of the consequences of failing to comply.
9 Plaintiff has not complied with the Court's March 16, 2018 order
10 or responded to it in any way. Nor has she complied with the
11 Court's November 7, 2017 minute order and case management order.
12 Accordingly, the Court will dismiss this case with prejudice for
13 failure to prosecute.

14 CONCLUSION

15 For the foregoing reasons, the Court grants Defendants'
16 motion to dismiss this case with prejudice for failure to
17 prosecute. The Clerk shall enter judgment and close this case.
18 The parties shall bear their own costs.

19 IT IS SO ORDERED.

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21 Dated: April 4, 2018



22 CLAUDIA WILKEN
23 United States District Judge
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